IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1295 OF 2004

Shri.Shivdas Shankar Tike ...Petitioner (orig.applicant)

vs.

The Government of Maharashtra and another. ...Respondents.

Mr.V.N.Tayade, for the Petitioner.

CORAM: A.P.SHAH & S.U.KAMDAR, JJ.

DATED: 21st September,2004

ORAL JUDGEMENT (PER S.U.KAMDAR,J.)

1. By the present petition, the petitioner is challenging the order passed by the Maharashtra Administrative Tribunal dated 11.12.2003 in Original Application no.301 of 2003. The petitioner is also further seeking relief of reinstatement in services with all consequential benefits.

2. Some of the material facts of the present case are as under:-

. The petitioner was an employee in the

Sales Tax Department of State of Maharashtra. On

31.12.1991 he was promoted to the post of "Clerk" in Sales Tax Department. On 27.11.1998, the petitioner was placed under suspension.

3. On 27.8.1999, the chargesheet was issued to the petitioner initiating a departmental inquiry on the ground of misconduct and the petitioner was charged with misappropriation of funds. On 10.9.1999, the petitioner filed a reply and claimed that the said error was inadvertent and not deliberate. It was his further case that he has acted as per the instructions of his superior Mr.Bhoi. Ultimately on 31.7.2000, the Inquiry officer submitted the report and held that the charge of misappropriation was proved. By a letter dt.8.3.2001 the petitioner was asked to show cause against the proposed penalty. The petitioner submitted his representation by his letter dated 28.3.2001. On 18.6.2001, the dismissal order was passed against the petitioner, dismissing him from services of the respondent. On 30.7.2001, the departmental appeal was preferred by the petitioner under Rule 17 of M.S.C. (D & A) of 1979. On 16.8.2002 the said departmental appeal also came to

be dismissed. On 8.10.2002, the petitioner preferred

O.A. no.928 of 2002 which was allowed by the Tribunal and the matter was remanded back to appellate authority. On 6.1.2003, the appellate authority on remand, passed an order once again. However, the punishment of dismissal was substituted by a removal. On 15.1.2003, the said order was served upon the petitioner and accordingly, the petitioner preferred Original Application before Maharashtra Administrative Tribunal being O.A. no.301 of 2003.

4. The tribunal by order dated 11.12.2003 dismissed the O.A. preferred by the petitioner. While dismissing the said O.A., the tribunal has given findings that there is material and evidence to the effect that the petitioner is guilty of the charges levelled against petitioner. The tribunal has further held that there is an admission of guilt on the part of the petitioner and therefore, the order passed by the authority cannot be disturbed. The tribunal has held as under:-

> "The applicant admitted the guilt and the punishment of dismissal

from service came to be imposed."

5. We have considered the contention raised by the Petitioner. The only contention raised is that the act on the part of the petitioner is at the behest of his superior Mr.Bhoi and the said Mr.Bhoi has not been examined in the departmental proceedings, and therefore, according to him, the said inquiry is to be vitiated and he be reinstated in service by setting aside the order of the tribunal. We are not impressed by the arguments of the learned advocate of the petitioner. It is not in dispute that the guilt has been admitted by the petitioner. During the course of inquiry proceedings, in his own reply it is contended that it is an inadvertent act of the petitioner. Further more, even in the course of evidence before enquiry officer he has admitted the guilt and the tribunal has mentioned the same in its order. There is also evidence that there has been tampering and alteration on the challan by indicating higher denominations than what actually should have been. Therefore, consequential result is misappropriation of fund.

6. We do not find that it is a fit case to

exercise our writ jurisdiction under Article 226 of Constitution of India. We do not see any reasons to interfere with the order passed by the tribunal and order reinstatement of the petitioner in the service.

The view taken by the tribunal is based on evidence and material and therefore, can not be disturbed.

7. In the light of aforesaid view which we have taken, we are dismissing the present petition. However, there shall be no order as to costs.

(A.P.Shah, J.)

21.9.2004 (S.U.Kamdar, J)